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9 *Attorneys for Intervenor People of the State of  
California*

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN DIEGO, CENTRAL DIVISION

14 **CLEVELAND NATIONAL FOREST  
15 FOUNDATION and CENTER FOR  
16 BIOLOGICAL DIVERSITY**

17 Plaintiffs and Petitioners,

18 v.

19 **SAN DIEGO ASSOCIATION OF  
20 GOVERNMENTS; SAN DIEGO  
ASSOCIATION OF GOVERNMENTS  
21 BOARD OF DIRECTORS; AND DOES 1  
THROUGH 25, INCLUSIVE;**

22 Defendants and Respondents.  
23  
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**Case No. 37-2011-00101593-CU-TT-CTL**

**PEOPLE OF THE STATE OF  
CALIFORNIA'S PETITION FOR WRIT  
OF MANDATE IN INTERVENTION**

Date:  
Time:  
Dept: C-72  
Judge: The Hon. Timothy B. Taylor  
Trial Date: None  
Action Filed: November 28, 2011

Exempt from Filing Fees pursuant to  
Government Code section 6103



1 result in greater employment and job retention, as well as ensure that all residents, regardless of  
2 income, have ready access to employment centers and jobs.

3 4. Despite the serious nature of the air pollution problem in the San Diego Air Basin, the  
4 FEIR does not provide enough information for the public and decision makers to determine what  
5 the impact on ozone or cancer risk will be from carrying out the RTP/SCS. In particular, the  
6 FEIR does not provide enough information to determine how the health of the most vulnerable  
7 people in the region will be affected (e.g., those living directly adjacent to freeways and  
8 highways), or how residents' risk of developing cancer will increase based on emissions from the  
9 RTP/SCS's freeway and highway projects.

10 5. In addition, California as a whole faces severe impacts from global climate change  
11 caused by emissions of greenhouse gases. The available science shows, and state law establishes,  
12 that we must substantially reduce our greenhouse gas emissions by midcentury to reduce the risk  
13 of dangerous climate change. Moreover, state law requires transportation plans like the RTP/SCS  
14 to reduce driving and the greenhouse gas emissions that driving causes. While the FEIR shows  
15 that greenhouse gas emissions from driving will go down at first, it also shows that, after 2020,  
16 miles driven will go up. In fact, driving will increase by about half over 2010 levels by 2050, and  
17 overall greenhouse gas emissions from driving will increase after 2020 and continue to increase at  
18 least until 2050. In 2050, greenhouse gas emissions resulting from the RTP/SCS will be greater  
19 than the 2005 baseline emissions.

20 6. CEQA requires that agencies like SANDAG formally commit to doing everything  
21 that is technically, legally, and economically feasible to lessen or avoid the substantial  
22 environmental effects that will result from projects they approve. Here, the FEIR does not  
23 propose and evaluate all feasible mitigation measures to lessen the RTP/SCS's environmental  
24 harm, and does not give full and fair consideration to alternative project designs, like increased  
25 transit projects in the early years of the RTP/SCS, that could avoid or reduce some of the  
26 environmental damage. Some of those alternatives could also provide long-term jobs, access to  
27 employment, and other sustainable economic and social benefits.

28



1 responsible for transportation planning in the San Diego region (Pub. Util. Code, § 120300), for  
2 receiving federal transit funding (Pub. Util. Code, § 120351), and for other transportation  
3 planning and transportation-related activities. In its role as a Regional Transportation  
4 Commission, and pursuant to the transportation planning law commonly known and referred to  
5 herein as SB 375,<sup>1</sup> SANDAG is responsible for preparing, adopting, and carrying out a  
6 Sustainable Communities Strategy (SCS) for the San Diego region. In this Petition, the overall  
7 plan will be referred to as the RTP/SCS. SANDAG is a “public agency” and is the “lead agency”  
8 pursuant to CEQA for the preparation of the 2050 RTP and SCS for the San Diego region, and is  
9 responsible for complying with CEQA as to the preparation and adoption of the RTP and SCS.

10 11. The SANDAG Board of Directors (Board) is the governing body for SANDAG, and  
11 also serves as the Regional Transportation Commission for the San Diego region. It is also  
12 responsible for complying with CEQA as to the preparation and adoption of the RTP and SCS for  
13 the San Diego region. The Board is sued in its official capacity only.

14 12. DOES 1 through 25, inclusive, are persons whose names and identities are unknown  
15 to the People at this time, and the People therefore sue them under these fictitious names. The  
16 People will amend this petition to allege the true names and identities of DOES 1 through 25 as  
17 soon as they are learned. Upon information and belief, each DOE is the agent or employee of  
18 SANDAG or the SANDAG Board of Directors, and performed acts in the scope of his or her  
19 agency or employment regarding the facts upon which this petition is based.

#### 20 JURISDICTION AND VENUE

21 13. Pursuant to Public Resources Code sections 21168 and 21168.5, and Code of Civil  
22 Procedure sections 1085 and 1094.5, this Court has jurisdiction to hear this matter.

23 14. Venue is appropriate in this judicial district because the violations of CEQA occurred  
24 in San Diego County.

25 15. The People have satisfied all statutory prerequisites to the filing of this action.

26  
27 <sup>1</sup> Stats. 2008, ch. 728 (Sen. Bill No. 375 (2007-2008 Reg. Sess.); see *id.* at § 2 [amending  
28 Gov. Code, § 65080(b)(2)].



1 priority list. SANDAG prepared and the SANDAG Board of Directors adopted the 2050 RTP for  
2 the San Diego region.

3 18. In addition, pursuant to SB 375, and in its role as the Regional Transportation  
4 Commission for the San Diego region, SANDAG prepared a Sustainable Communities Strategy  
5 (SCS) for the region as part of the RTP. The Legislature made findings in SB 375 that cars and  
6 light trucks are responsible for about 50 percent of the conventional air pollution in California,  
7 and that transportation is responsible for about 40 percent of the greenhouse gases emitted in the  
8 State.<sup>2</sup> The Legislature directed that each Regional Transportation Commission in California, as  
9 part of its RTP process, prepare an SCS for its area of jurisdiction to effectuate land use and  
10 transportation patterns that would reduce emissions of greenhouse gases by target amounts that  
11 would be set by the California Air Resources Board (ARB). (Gov. Code, § 65080.) The  
12 Legislature found that these reductions in greenhouse gas emissions are needed in order for the  
13 State to meet the overall greenhouse gas reductions mandated in Health and Safety Code sections  
14 38500, et seq., the California Global Warming Solutions Act of 2006, commonly known as AB  
15 32.<sup>3</sup> SANDAG prepared and adopted such an SCS as part of its 2050 RTP. SANDAG also  
16 prepared an environmental impact report (EIR) on the RTP/SCS. The EIR purports to present an  
17 adequate and accurate analysis of the adverse environmental impacts of the RTP/SCS, but the  
18 People challenge the EIR's adequacy as to the environmental harm that may result from the  
19 project's emphasis on freeway and highway expansion and extension, to the detriment of public  
20 transportation and air quality, its adequacy and accuracy in analyzing and disclosing the air  
21 quality impacts of the RTP/SCS, especially the impacts on communities that are already  
22 overburdened by pollution, and the project's failure to achieve long-term and sustainable  
23 reductions in greenhouse gas emissions.

24 19. The RTP/SCS lists individual transportation projects to expand or extend multiple  
25 freeways and highways, including the I-5, I-8, I-15, and I-805, and State Routes 56, 67, 76, 94,  
26 125, and 904. In all, some 1,500 miles of roadway "improvements" are provided for in the

27 <sup>2</sup> Stats 2008, ch. 728, § 1.

28 <sup>3</sup> *Id.*

1 RTP/SCS. Public transportation projects such as transit projects, and bicycle and foot paths are  
2 also part of the RTP/SCS, but are largely scheduled for the later years of the RTP/SCS when  
3 funding is less likely to be available.

4 20. SANDAG prepared a draft environmental impact report (DEIR) on the RTP/SCS, as  
5 required by CEQA. The DEIR was released to the public on or about June 7, 2011. Over 4,000  
6 comments were submitted to SANDAG on the DEIR, including the Attorney General's comment  
7 letter dated September 16, 2011, attached as Exhibit 1. Comments advising SANDAG that the  
8 DEIR did not comply with CEQA were submitted by the Attorney General, the Cleveland  
9 National Forest Foundation and the Center for Biological Diversity, the Sierra Club, and others.  
10 SANDAG released the final EIR (FEIR) to the public on or about October 18, 2011. The FEIR  
11 made some changes and corrections to the DEIR, added new material to the Air Quality section of  
12 the document, and provided SANDAG's responses to comments made on the DEIR, including the  
13 Attorney General's comments. The portions of the FEIR relevant to the People's claims are  
14 described below.

15 **A. Discussion and Analysis of Significant Impacts of the Project on Air**  
16 **Quality**

17 21. Under CEQA, the significance of the project's impacts to localized air quality must  
18 be viewed in context. The San Diego Air Basin, which comprises the San Diego region and  
19 SANDAG's area of jurisdiction, has severely polluted air. The San Diego area was ranked by the  
20 American Lung Association this year as having the seventh worst ozone problem, and the  
21 fifteenth worst particulate pollution problem, in the nation.<sup>4</sup> As the FEIR states, the San Diego air  
22 basin exceeded the health-based eight-hour federal ozone standard on 14 days in 2010, and it  
23 exceeded the federal fine-particulate standard on 2 days. (FEIR, p. 4.3-4.) The basin exceeded  
24 the more stringent California eight-hour standard for ozone on 21 days in 2010, and California's  
25 particulate matter (soot) standard on 22 days. (*Id.*) Perhaps most important, data reported in the  
26 FEIR shows that the average increased risk of developing cancer from breathing particulate  
27 matter emitted by diesel vehicles in the San Diego Air Basin in 2010 was about *480 excess cases*

28 <sup>4</sup> American Lung Association, *State of the Air 2011*, at pp. 11, 13.

1 of cancer per million people exposed. (FEIR, p. 4.3-44.) For comparison purposes, California's  
2 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code sections  
3 25249.5 et seq., (commonly referred to as Proposition 65) requires that persons exposed to  
4 chemicals known to the State of California to cause cancer be warned if that exposure will cause a  
5 cancer risk of *ten* excess cancer case in one million persons exposed. (Cal. Code of Regs., tit. 27,  
6 §§ 25701, 25703(b).)

7 22. The FEIR acknowledges only at the most general level that the RTP/SCS will  
8 contribute to air pollution, but fails to adequately analyze and disclose the details of project's air  
9 quality impacts and its effects on public health, both regionally and in already burdened  
10 communities. For example, the FEIR:

11 a) Does not use air quality modeling or other techniques to predict the impact of  
12 emissions associated with the RTP/SCS on actual concentrations in the air of volatile organic  
13 gases and nitrogen oxides, which are the chemical ingredients that combine in sunlight to  
14 form ozone (what is commonly called "smog"), or on the formation in the ambient air of  
15 ozone from these emissions. The FEIR does show expected amounts, in tons per day, of  
16 emissions of these pollutants, but does not show what their relative contribution will be to the  
17 expected overall amounts of these pollutants in the air. Instead, the FEIR compares the  
18 emissions of these pollutants to emissions targets approved by the federal government that are  
19 aimed at eventual compliance with federal air quality standards. The FEIR does not make  
20 clear the degree to which the RTP/SCS will contribute to unhealthy air in the San Diego Air  
21 Basin until such time as the federal air quality standards are met;

22 b) Does not use air quality modeling or other techniques to predict the impact of  
23 emissions associated with the RTP/SCS on compliance with the California air quality  
24 standards for any pollutant. The California standards for most pollutants are more stringent  
25 than their federal counterparts, and harder to meet. The FEIR does not make clear when, or  
26 even whether, the San Diego Air Basin will comply with the California standards, and  
27 whether the RTP/SCS will affect the region's ability to meet them and by what date;

28 c) Does not analyze or disclose the magnitude and significance of deterioration in air

1 quality caused by the project, including increases in particulate matter emissions. The EIR  
2 does not analyze or calculate the impact on the risk of cancer from the RTP/SCS regionally or  
3 on specially impacted communities from these increases in particulate matter emissions,  
4 including particulate matter emitted by diesel vehicles, despite acknowledging that particulate  
5 matter emissions from diesel vehicles is likely to be carcinogenic (FEIR, at 4.3-9-10; App. G  
6 at 661), and that the existing risk of cancer in the San Diego region from exposure to diesel  
7 particulate matter emissions has been calculated at about 480 excess cancer cases per one  
8 million people exposed (FEIR, at 4.3-44); and

9 d) Does not perform an adequate analysis to determine whether the health impacts of  
10 exposure to increased particulate matter emissions will be more severe for low-income or  
11 minority communities that already suffer from disproportionate health burdens from existing  
12 levels of localized air pollution.

13 **B. Discussion and Analysis of Significant Impacts of the Project on**  
14 **Greenhouse Gas Emissions and Global Warming**

15 23. The California Legislature has declared that global warming caused by emissions of  
16 greenhouse gases (GHGs) “poses a serious threat to the economic well-being, public health,  
17 natural resources, and the environment of California. The potential adverse impacts of global  
18 warming include the exacerbation of air quality problems, a reduction in the quality and supply of  
19 water to the state from the Sierra snowpack, a rise in sea levels,” and other serious environmental  
20 harms. (Health & Saf. Code, § 38501(a).) In addition, AB 32 mandates that California reduce its  
21 total statewide greenhouse gas emissions to the level they were in 1990 by 2020, which would  
22 require a reduction of about 15 percent from current statewide levels. AB 32 carries out  
23 Executive Order S-03-05 (2005), which set the statewide target for greenhouse gas emissions in  
24 2050 at a level 80 percent below 1990 levels. Executive Order S-03-05 is the official policy of  
25 the State of California. As the California Air Resources Board has found, “[t]he 2020 goal was  
26 established to be an aggressive, but achievable, mid-term target, and the 2050 greenhouse gas  
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1 emissions reduction goal represents the level scientists believe is necessary to reach levels that  
2 will stabilize climate.”<sup>5</sup>

3 24. The FEIR section dealing with emissions of greenhouse gases and their impact on  
4 global warming and climate change shows:

5 a) The overall amount of driving in the San Diego region, expressed as Vehicle Miles  
6 Traveled (VMT), will increase by about half over the life of the RTP/SCS, increasing by  
7 10.5 percent over 2010 levels by 2020, by 32.3 percent by 2035, and by 51.1 percent by  
8 2050. (FEIR, at 4.12-16, 4.12-21, and 4.12-24, respectively);

9 Overall GHG emissions associated with the RTP/SCS will decrease until the year 2020, but  
10 will increase after 2020 and continue to increase at least until 2050, which is the planning  
11 horizon of the RTP/SCS. (FEIR, at 4.8-26.) SB 375 requires that Regional Transportation  
12 Commissions like SANDAG prepare and adopt an SCS as a means of reducing VMT and  
13 the resulting emissions of greenhouse gases.<sup>6</sup> While the FEIR states that RTP/SCS will  
14 meet the greenhouse gas reduction targets set by the ARB pursuant SB 375 for SANDAG  
15 for 2020 and 2035, the trajectory of per capita GHG emissions from cars and light trucks  
16 moves upward from 2020 to 2035, suggesting that the early reductions are not sustainable  
17 over the longer term. The FEIR shows that SANDAG will just meet its SB 375 greenhouse  
18 gas emissions reductions target for 2035, and that greenhouse gas emissions will then  
19 continue to increase to 2050, with emissions in 2050 exceeding the 2010 baseline emissions  
20 levels (FEIR at 4.8-26), a result that is inconsistent with the State’s objectives to avoid  
21 dangerous climate change; and

22 b) Despite the increase in GHG emissions that will result from the RTP/SCS, and  
23 despite the RTP/SCS’s planning horizon of 2050, the FEIR performs no analysis of the  
24 impact of the RTP/SCS on future climate change beyond 2035 and out to the full TP/SCS  
25 planning horizon of 2050, or on the state’s goals to greatly *reduce* GHG emissions.

27 <sup>5</sup> California Air Resources Board, Scoping Plan (Dec. 2008) at p. 4.

28 <sup>6</sup> Stats. of 2008, ch. 728, § 1.

1           **C. Discussion and Analysis of Mitigation Measures to Lessen the Significant**  
2           **Impacts of the Project**

3           25. The discussion of mitigation for air quality and GHG impacts in the FEIR states that  
4 mitigation is not feasible at the program (i.e., the RTP/SCS) level, and must be done by those  
5 state and local agencies that actually build the individual projects listed in the RTP/SCS.  
6 SANDAG and the SANDAG Board of Directors repeat this assertion in their findings underlying  
7 certification of the FEIR, stating that SANDAG and the SANDAG Board of Directors lack legal  
8 authority to place conditions on projects they do not directly fund. The FEIR cites no analysis or  
9 evidence in support of this assertion, and comments submitted by Petitioners Cleveland National  
10 Forest Foundation and Center for Biological Diversity show that at least one other Regional  
11 Transportation Commission has used its legal authority to condition release of transit project  
12 funding on compliance by local governments with transit-specific mitigation required by that  
13 Regional Transportation Commission.

14           **D. Discussion and Analysis of Alternatives to the Project That Would Lessen**  
15           **its Significant Environmental Impacts**

16           26. The FEIR's conclusion that all alternatives are infeasible is not supported by  
17 substantial evidence. During the public comment period, several commenter's proposed  
18 alternative RTP/SCS concepts, in which more transit projects, and fewer freeway and roadway  
19 extensions and expansions, would be built in the early years of the RTP/SCS. The EIR's  
20 rejection of these alternatives is not based on a showing, supported by substantial evidence, that  
21 the alternatives are legally or economically infeasible, but instead on the EIR's conclusion that no  
22 alternatives would meet all objectives for the project. Under the CEQA Guidelines, however,  
23 alternatives must be considered even if they "would impede to some degree the attainment of the  
24 project objectives, or would be more costly."<sup>7</sup>

25           **E. Finding of Overriding Considerations and Supporting Substantial**  
26           **Evidence**

27           27. SANDAG and SANDAG's Board of Directors certified the FEIR as legally adequate  
28 under CEQA, and made findings to support that certification. In the Statement of Overriding

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<sup>7</sup> CEQA Guidelines, §15126.6, subd. (b).

1 Considerations, SANDAG made a finding that the RTP/SCS would provide more jobs than the  
2 legally infeasible No Project alternative, which would keep the existing RTP in place. As stated  
3 in a comment letter dated October 26, 2011 by the San Diego and Imperial Counties Labor  
4 Council, transit projects, such as those in various alternatives proposed to SANDAG and the  
5 SANDAG Board of Directors in comments on the DEIR, would “result in *greater employment*  
6 *and job retention*” than the proposed RTP/SCS, “while laying the foundation for sustainable  
7 transportation systems.” (Emphasis added.) In the Statement of Overriding Considerations,  
8 SANDAG fails to address this or other proposed alternatives, which would also create jobs and  
9 serve the economic objectives of the project. Because it is based on a comparison between the  
10 project and an alternative that is not feasible to carry out, the Statement is not supported by  
11 substantial evidence.

## 12 CAUSE OF ACTION

### 13 VIOLATIONS OF CEQA (PUBLIC RESOURCES CODE SECTIONS 21000, ET. SEQ. AND 14 THE CEQA GUIDELINES, CAL. CODE OF REGS., TIT. 14, SECTIONS 15000 ET SEQ.)

#### 15 SANDAG and the SANDAG Board of Directors 16 Failed Adequately to Analyze and Disclose Project Impacts

17 28. Paragraphs 1 through 27 are hereby incorporated by reference.

18 29. An adequate EIR must analyze and disclose all potentially significant environmental  
19 impacts of a proposed project, including all phases of the project, and both direct and indirect  
20 impacts. (CEQA Guidelines, §§ 15002-15003, 15126, 15126.2.)

21 30. An EIR must analyze and disclose local, as well as regional, impacts. (CEQA  
22 Guidelines, §§ 15125, 15126.2.)

23 31. Petitioner and others commented that the EIR failed adequately to analyze and  
24 disclose the impacts of the RTP/SCS on air quality, public health, greenhouse gas emissions, and  
25 state goals relating to climate change.

26 32. By failing adequately to analyze and disclose impacts on the environment from the  
27 RTP/SCS, SANDAG and the SANDAG Board of Directors committed a prejudicial abuse of  
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1 discretion for which the approval of the RTP/SCS must be set aside. (Pub. Resources Code §  
2 21169.5.)

3 **SANDAG and the SANDAG Board of Directors**  
4 **Failed to Adopt All Feasible Mitigation Measures**

5 33. Paragraphs 1 through 32 are hereby incorporated by reference.

6 34. CEQA establishes a duty on the part of the lead agency to mitigate all significant  
7 environmental impacts. (Pub. Resources Code, §§ 21002, 21002.1, 21081; CEQA Guidelines, §§  
8 15021, subd. (a), 15091.)

9 35. A lead agency may not approve a project for which there are significant  
10 environmental impacts unless the agency finds that: (a) mitigation measures have been required  
11 for the project that avoid or substantially lessen the significant environmental impacts; or (b)  
12 mitigation measures are found to be infeasible based on substantial evidence in the record.  
(CEQA Guidelines, §§ 15091, 15092.)

13 36. Additionally, a lead agency may not adopt a statement of overriding considerations  
14 for significant environmental impacts unless all feasible mitigation has been required of the  
15 project, or the agency makes findings, supported by substantial evidence in the record, that  
16 rejected measures are infeasible. (CEQA Guidelines, §§ 15091, 15092.)

17 37. Petitioner and others commented on SANDAG's failure to require all feasible  
18 mitigation measures for the RTP/SCS.

19 38. SANDAG and the SANDAG Board of Directors failed to adopt all feasible mitigation  
20 measures to lessen the significant environmental impacts of the RTP/SCS, in violation of CEQA,  
21 and failed to make findings, supported by substantial evidence in the record, that rejected  
22 measures were infeasible.

23 39. SANDAG and the SANDAG Board of Directors also improperly adopted a Statement  
24 of Overriding Considerations when feasible mitigation existed to lessen the impacts of the  
25 RTP/SCS. (CEQA Guidelines, § 15092.)

26 40. By approving the RTP/SCS when feasible mitigation measures existed to lessen its  
27 impacts, SANDAG and the SANDAG Board of Directors committed a prejudicial abuse of  
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1 discretion for which the approval of the RTP/SCS must be set aside. (Pub. Resources Code, §  
2 21168.5.)

3 **SANDAG and the SANDAG Board of Directors Failed to Consider a Reasonable**  
4 **Range of Alternatives to the RTP/SCS and Improperly Rejected Feasible Alternatives**

5 41. Paragraphs 1 through 40 are hereby incorporated by reference.

6 42. An adequate EIR must consider a reasonable range of alternatives to the proposed  
7 project. The alternatives must be designed to meet basic project objectives and lessen or avoid  
8 significant environmental impacts from the project. (CEQA Guidelines, § 15126.6.)

9 43. A lead agency may not approve a project for which there are significant  
10 environmental impacts unless it makes findings, supported by substantial evidence in the record,  
11 that alternatives that would lessen the significant impacts are infeasible. (CEQA Guidelines, §  
12 15091, subd. (a)(3).)

13 44. SANDAG and the SANDAG Board of Directors evaluated several alternatives to the  
14 RTP/SCS. They rejected all alternatives to the proposed RTP/SCS.

15 45. SANDAG and the SANDAG Board of Directors failed to make findings, supported  
16 by substantial evidence in the record, that all alternatives were infeasible with the meaning of  
17 CEQA Guidelines section 15091, subdivision (a)(3). Alternatives were rejected because they did  
18 not meet all objectives of the RTP/SCS, despite CEQA Guideline section §15126.6, subdivision  
19 (b), which provides that that alternatives must be considered even if they “would impede to some  
20 degree the attainment of the project objectives, or would be more costly.”

21 46. By failing adequately to consider a reasonable range of alternatives to the RTP/SCS,  
22 and failing to make findings regarding the infeasibility of alternatives based on substantial  
23 evidence and in compliance with the CEQA Guidelines, SANDAG and the SANDAG Board of  
24 Directors committed a prejudicial abuse of discretion for which the approval of the RTP/SCS  
25 must be set aside,

26 **SANDAG and the SANDAG Board of Directors Failed to Support**  
27 **the Statement of Overriding Considerations by Substantial Evidence**

28 47. Paragraphs 1 through 46 are hereby incorporated by reference.



1 **PRAYER FOR RELIEF**

2 WHEREFORE, the People of the State of California, by and through Attorney General  
3 Kamala D. Harris, pray this Court as follows:

4 1. For issuance of a peremptory or alternative writ of mandate pursuant to Code of Civil  
5 Procedure sections 1085 and 1094.5, and Public Resources Code section 21168.9:

6 a) Directing SANDAG and the SANDAG Board of Directors to void every  
7 determination, finding, and/or decision related to or constituting certification and adoption of  
8 the FEIR for the 2050 RTP/SCS, including certification of the FEIR, approval and adoption of  
9 Findings regarding the FEIR, approval and adoption of the Statement of Overriding  
10 Considerations, approval and adoption of the Mitigation Monitoring Plan, and approval and  
11 adoption of Resolutions 2012-08 and 2012-09 approving and adopting the FEIR and the  
12 RTP/SCS;

13 b) Directing SANDAG and the SANDAG Board of Directors to suspend any and all  
14 activities pursuant to, or in furtherance of, SANDAG and the SANDAG Board of Directors'  
15 determination, findings, and/or decisions related to approval of the 2050 RTP/SCS, until  
16 SANDAG and the SANDAG Board of Directors have taken all actions necessary to bring the  
17 FEIR, and the findings, determinations, decisions, and approvals of the 2050 RTP/SCS into  
18 full compliance with CEQA; and

19 c) Directing SANDAG and the SANDAG Board of Directors to comply fully with the  
20 requirements of CEQA with respect to the 2050 RTP/SCS, and to take any other specific  
21 action that may be necessary to bring SANDAG and the SANDAG Board of Directors'  
22 determinations, findings, and/or decision into full compliance with CEQA;

23 2. For a temporary stay, and preliminary and permanent injunctions, pursuant to Code of  
24 Civil Procedure sections 1085 and 1094.5 and as otherwise provided by law, restraining  
25 SANDAG and the SANDAG Board of Directors and any of their agents, employees, officers,  
26 representatives, contractors, consultants, and any other persons acting in concert with them or on  
27 their behalf, from taking any action or expending any funds to carry out the 2050 RTP/SCS until  
28 and unless they have complied with the provisions of the writ described in number 1 above;

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3. For the award of all costs of this suit, and of reasonable attorney's fees, to the Office of the Attorney General, as authorized by Code of Civil Procedure section 1021.8 and as otherwise provided by law; and

4. For such other relief as the Court deems just, proper and equitable.

Dated: January 20 2012

Respectfully Submitted,  
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TIMOTHY R. PATTERSON  
Supervising Deputy Attorney General

  
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Deputy Attorney General  
*Attorneys for Intervenor People of the State of California*

SD2011950024

**EXHIBIT 1**

**KAMALA D. HARRIS**  
Attorney General

State of California  
**DEPARTMENT OF JUSTICE**



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September 16, 2011

Honorable Jerome Stocks  
Chair, Board of Directors  
San Diego Association of Governments  
401 B Street, Suite 700  
San Diego, CA 92101

**RE: Draft Environmental Impact Report for 2050 Regional Transportation Plan  
and Sustainable Communities Strategy**

Dear Chairman Stocks and Honorable Members of the Board:

Attorney General Kamala D. Harris submits the following comments on the Draft Environmental Impact Report (DEIR) prepared for the San Diego Association of Governments' (SANDAG) 2050 Regional Transportation Plan and Sustainable Communities Strategy (RTP/SCS).<sup>1</sup> While we recognize the difficulty of SANDAG's task – to prepare the first SCS in the State as required by SB 375<sup>2</sup> – our review of the DEIR for the RTP/SCS has revealed some significant legal problems, as set forth below. We believe that SANDAG has the ability to correct these problems and improve the RTP/SCS, which will benefit not only the San Diego region, but will help to set the standard for other Metropolitan Planning Organizations across California.

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<sup>1</sup> The Attorney General submits these comments pursuant to her independent power and duty to protect the environment and natural resources of the State from pollution, impairment, or destruction, and in furtherance of the public interest. (See Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) This letter is not intended, and should not be construed, as an exhaustive discussion of the DEIR's compliance with the California Environmental Quality Act (CEQA).

<sup>2</sup> Senate Bill 375 (Chapter 728, Statutes of 2008).

## Comments on the DEIR

### Localized Air Pollution

The SANDAG region has some of the most serious local air quality problems in the State and the nation – in substantial part caused by vehicle emissions. The harm from these pollutants is not necessarily distributed equally throughout the region, but may be more concentrated in communities immediately adjacent to large-scale industrial and commercial development and major transportation corridors, and may more particularly affect certain segments of the population. As discussed below, our review of the DEIR indicates that SANDAG has set too low a bar for determining whether the air quality impacts of its RTP/SCS are significant, and, further, has failed to analyze the impacts of projected increases in pollution on communities that are sensitive or already overburdened with pollution, in violation of CEQA.

#### Background: Pollutants of Concern in the San Diego Air Basin

It is well established that “[t]he significance of an activity depends upon the setting.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 [citing Cal. Code Regs., tit. 14, § 15064, subd. (b)]; see also *id.* at 721.) Accordingly, the significance of any added pollutant emissions must be judged in the context of an air basin that already exceeds health-based federal air quality standards. (See *ibid.*) The San Diego area was ranked by the American Lung Association this year as having the seventh worst ozone problem, and the fifteenth worst particulate pollution problem, in the nation.<sup>3</sup> Pollutants of concern in the San Diego air basin include ozone, the chemical commonly called “smog,” which may permanently decrease lung function;<sup>4</sup> and particulate matter, which impairs lung function and can exacerbate asthma. Small particulate matter (2.5 microns in size or less), a component of diesel exhaust, is of particular concern, because it can penetrate deeply into the lungs, bypassing the body’s defenses, and can carry carcinogens on the surface of the particles.

The seriousness of the localized air pollution problem as it exists today in the region can hardly be overstated. The area exceeded the health-based federal ozone standard on 24 days in 2009, and it exceeded the federal particulate standard on 4 days. The basin exceeded the more stringent California standard for ozone on 127 days in 2009, and the fine-particulate standard on 78 days. The area has a history of failing to meet applicable air quality objectives. The San Diego Air Pollution Control District (APCD) stated in its 2009 Regional Air Quality Strategy (RAQS) that it has not consistently met the Health and Safety Code’s 5% per year ozone reduction target during any year during the 2003-2006 time period, and that the APCD expects reductions of only about 3% per year during the 2006-2009 time period. (San Diego APCD 2009-RAQS, p. 2.)

<sup>3</sup> American Lung Association, *State of the Air 2011*, at pp. 11, 13.

<sup>4</sup> Gauderman, et al., *The Effects of Air Pollution on Lung Development from 10 to 18 Years of Age* (Sept. 9, 2004) 351 *The New England Journal of Medicine* 1057-1068.

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SANDAG's Focus on "Conformity" with the State Air Pollution Plans Fails Adequately to Address the Region's Serious Air Quality Problems.

Where an area exceeds federal air quality standards for air pollutants, federal law allows funding of the individual transportation projects listed in an RTP only if the RTP "conforms" to a federally approved state plan to meet those federal standards. The DEIR's analysis of whether localized air pollution resulting from the RTP/SCS is significant under CEQA focuses almost exclusively on whether such conformity is achieved. There are significant problems with this limited approach, which substitutes a determination of whether certain federal laws are met for SANDAG's obligation under CEQA to conduct a thorough analysis of the actual effects on the air and on public health that will result from the addition of the many hundreds of miles of highway expansion and extensions that are in the RTP/SCS.

California's most recent federally approved plan was prepared in 2007, and therefore does not reflect current conditions. The DEIR acknowledges that the federal EPA is expected to soon reclassify the San Diego Air Basin as in "serious" nonattainment of the federal ozone standard, a designation that requires attainment of the federal standard by June of 2013. (DEIR, p. 4.3-6.) Demonstrating conformity with the 2007 plan emissions budgets does not, by itself, show that relevant health effects created by the new pollution generated by the RTP/SCS have been analyzed and disclosed, or even that the relevant federal standards will be met. Instead, EPA's reclassification of the air basin as having worse air quality, and the imposition of such a short deadline for meeting the federal ozone standard, indicates a more serious air pollution problem that may require more stringent control measures to protect the public health.<sup>5</sup>

In addition, the DEIR fails to analyze whether the California standard for ozone, more stringent than the federal standard, will be met during the life of the RTP/SCS, or what the RTP/SCS's contribution to current or future violations of that standard will be. The DEIR appears to rely solely on the RAQS to meet the state ozone standard. (See DEIR at p. 4.3-29-30.) Yet, as noted, the region has not consistently met the RAQS 5% per year ozone reduction target. The fact that U.S. EPA is expected to reclassify the Basin as in "serious" nonattainment of the less stringent federal ozone standard would indicate that the RAQS standards have not been enough to prevent deteriorating air quality. Thus, any assumption that the RAQS will consistently achieve the 5% reduction target in the future is unsupported, and any assertion that the RAQS will attain the state ozone standard at a time certain unfounded. A full analysis is

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<sup>5</sup> Even if conformity with federal standards in state-approved plans were an appropriate benchmark for significance under CEQA, the DEIR does not contain a quantitative analysis, using the most recent available air quality measurements as the baseline, to determine whether the federal air quality standards will actually be met, and what the public health consequences would be of adding the expected pollutant load from the RTP/SCS to existing conditions. (DEIR, at p. 4.3-14.)

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needed to show that the emissions caused by the RTP/SCS at different time points during its life will not contribute significantly to violations of the state ozone standard in the San Diego Air Basin.

SANDAG Has Failed Adequately to Address Impacts to Public Health and Communities Already Burdened with Pollution.

We commend SANDAG for including in its DEIR a chapter entitled "Environmental Justice." (DEIR, ch. 4.06.) That section appears to focus primarily on the RTP/SCS's effect on access to transit by traditionally underserved communities. SANDAG has, however, failed to analyze other equally, if not more, significant effects of the RTP/SCS on communities currently experiencing environmental injustice. The principal omission of the DEIR is the lack of any discussion of the impacts of the increased air pollution that will result from carrying out the RTP/SCS on communities already severely impacted by air pollution. As noted, CEQA requires that the significance of environmental impacts be considered in context. (*Kings County Farm Bureau, supra*, 221 Cal.App.3d at 718.) Such context may appropriately include (1) whether the region includes communities or subpopulations that may be particularly sensitive to increases in pollution; and (2) whether such communities or groups are already at or near their capacity to bear any additional pollution burden.

The DEIR does not identify whether the area affected by the RTP/SCS includes particularly sensitive communities that will be affected disproportionately by the acknowledged increase in pollution. "[A] number of studies have reported increased sensitivity to pollution, for communities with low income levels, low education levels, and other biological and social factors. This combination of multiple pollutants and increased sensitivity in these communities can result in a higher cumulative pollution impact." (Office of Environmental Health Hazard Assessment, *Cumulative Impacts: Building a Scientific Foundation* (Dec. 2010), Exec. Summary at p. ix.)<sup>6</sup> Research in other parts of California has shown that disadvantaged and minority communities are often exposed to unhealthy air more frequently and at higher levels than other groups.<sup>7</sup> Identifying these communities is an essential part of describing the relevant CEQA setting.

Once such communities are identified, SANDAG must analyze how the health of the residents in these communities would be expected to be particularly affected. As discussed, residents already are experiencing serious air pollution that is impacting health and welfare, and it is reasonable to assume that these effects currently are more concentrated in certain areas of the region, for example, in communities adjacent to large-scale industrial or commercial operations or transportation corridors used by heavy-duty trucks. In addition, viewed at the individual community scale, there may be synergistic adverse effects. For example, research

<sup>6</sup> Available at <http://oehha.ca.gov/ej/cipa123110.html>.

<sup>7</sup> Hall and Brajer, *The Benefits of Meeting Federal Clean Air Standards in the South Coast and San Joaquin Valley Air Basins* (2008) at 22-23.

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has shown that increases in greenhouse gas emissions may result in localized ozone increases; such increases have been observed in California.<sup>8</sup>

We believe that particulate pollution may be of special concern to already burdened communities. As discussed, diesel particulate emissions have serious health effects, since they impact respiratory function and can exacerbate asthma. Further, diesel particulates are known to the State of California to cause cancer,<sup>9</sup> and have been listed by the Air Resources Board (ARB) as a toxic air contaminant.<sup>10</sup> The DEIR shows that particulate matter pollution will increase over the life of the RTP/SCS. (DEIR, Table 4.3-5, p. 4.3-25.) It also reports that the ARB estimated in 2000 – over a decade ago – that a subset of particulate pollution, fine particulates emitted by diesel vehicles, created an additional cancer risk of 720 cancer cases per one million persons exposed in the San Diego Air Basin. (DEIR, p. 4.3-8.) For comparison purposes, a private business must provide a warning if it exposes individuals to a chemical that poses an increased cancer risk of ten cases in one million people exposed. (Cal. Code Regs, tit. 27, § 25703(b).)

Despite this high cancer risk, and the DEIR's own recognition that particulate pollution will increase over the life of the RTP/SCS, the DEIR does not analyze what public health effects the increase in particulate matter will cause. Nor does it estimate what portion of the increase in particulate pollution will be carcinogenic diesel particulate matter, and disclose the public health effects that increase may cause. Such an analysis is required under CEQA, so that both the decision maker and the public can know the full consequences of the decision being made. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-1220.) We are especially concerned that no analysis is presented either of the current risk from particulate pollution, nor of the impact of the projected increase in particulate pollution, on already overburdened or sensitive communities. Given the increase in particulate emissions shown in the DEIR, given the emphasis in the RTP/SCS on the Goods Movement Strategy for the San Diego region (RTP/SCS, Chapter 6), and given the DEIR's recognition that much of this goods movement will be accomplished by diesel trucks (DEIR, p. 4-16-8; see, also, RTP/SCS, Tech. Appdx. 4, p. 4 [estimating that roads and truckways will carry 90% by volume of goods through the region]), it is incumbent on SANDAG to fully analyze the public health consequences of the RTP/SCS in general, and of the Goods Movement Strategy, in particular.<sup>11</sup>

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<sup>8</sup> Jacobson, *Enhancement of Local Air Pollution by Urban CO2 Domes* (2010) Environ. Sci. Technol. 2497-2502. This phenomenon is of concern because, as discussed, under the RTP/SCS, vehicle miles travelled (VMT) trends up as the total number of vehicles on the road increases. (DEIR, pp. 4.12-16, 4.12-21, 4.12-24; contrast with Table TA 3.1, showing an overall decrease of 1% in VMT by 2050.) Increases in VMT cause increased emissions of greenhouse gases, which may in turn exacerbate localized pollution.

<sup>9</sup> Cal. Code Regs., tit. 27, § 27001.

<sup>10</sup> Cal. Code Regs., tit. 17, § 93000.

<sup>11</sup> See *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-1220, cited above.

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The goal of an RTP/SCS is a sustainable community, and no community can be sustainable unless its public health is protected. Thus, while the inclusion of a separate chapter of the DEIR on environmental justice is commendable, the current analysis is deficient, and should be redone and expanded to disclose the full scope of the air pollution and public health consequences of the RTP/SCS, and to propose mitigation measures for those consequences that are proportional to the seriousness of the impacts. (*City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 361-62.) We would be happy to work with SANDAG in making this part of the DEIR more meaningful.

SANDAG Has Failed Adequately to Consider Feasible Mitigation for Localized Air Quality Impacts.

Although it finds the RTP/SCS's impacts on localized air pollution to be significant, the DEIR proposes almost no mitigation measures to reduce or offset these impacts. Instead, the DEIR states that "mitigation measures at the program level is [sic] infeasible" for ozone precursors and carbon monoxide, and defers all mitigation for these pollutants to individual project-level CEQA processes. (DEIR, pp. 4.3-46, 4.3-47, 4.3-48.) CEQA requires that project changes or mitigation either be adopted or shown through substantial evidence to be infeasible; the DEIR, however, does not make such a showing.

The DEIR offers virtually no evidence that program-level mitigation is actually infeasible, and the mitigation measures it does propose lack certainty and are incomplete. For example, compliance with future local land use plans (the scope of which is not now known) is identified as the only feasible mitigation for ozone-related impacts. (DEIR, p. 4.3-48.) Mitigation for fine particulate matter is not discussed separately from mitigation for coarse particulates, despite their different sizes, health impacts, and sources. The dust control measures in the DEIR are not shown to be effective against fine particulates, which come more from industrial processes and fuel combustion than from ground disturbance. The DEIR's treatment of mitigation for conventional air pollution does not comply with CEQA's substantive mandate to mitigate all significant impacts. (Pub. Resources Code, §§ 21002, 21081(a).)

It is vital for the health of the San Diego region's public that all feasible mitigation be adopted and carried out to prevent further deterioration of the already unhealthy air, and it is also vital for the region's economy. Research shows consistently that the costs of reducing pollution are far outweighed by clean-air benefits such as increased worker productivity, increased agricultural outputs, and reductions in mortality and illness that result from cleaner air.<sup>12</sup> The research cited above -- finding minority communities more severely affected by air pollution -- also calculated the significant costs associated with polluted air in other air basins. Costs ranged

<sup>12</sup> On a nationwide basis, the Office of Management and Budget has estimated that the benefits of clean air regulations outweigh the costs by a ratio of about four to one. OMB, "Informing Regulatory Decisions: 2003 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities."

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from \$1,250 per person per year in the South Coast Air Basin to \$1,600 per person per year in the San Joaquin Valley Air Basin, due to increased health care costs and emergency room visits, missed work and school days, and even premature deaths.<sup>13</sup> CEQA mandates that SANDAG improve its analysis of the feasibility of localized air pollution mitigation, and the economic benefits of cleaner air and healthier communities must be considered in the feasibility calculus.

### **Climate Change Impacts: Greenhouse Gas Emissions**

Before discussing the DEIR's treatment of GHG emissions, it is important first to establish the relevant context for evaluating significance. The climate is affected by the concentration of GHGs in the atmosphere. The concentration of carbon dioxide, the primary GHG, has increased from approximately 280 parts per million (ppm) in pre-industrial times to well over 380 ppm, according to the National Oceanic and Atmospheric Administration's (NOAA) Earth Systems Research Laboratory.<sup>14</sup> Almost all of the increase is due to human activities (such as fossil fuel use).<sup>15</sup> The current rate of increase in carbon dioxide concentrations is about 1.9 ppm/year; present carbon dioxide concentrations are higher than any time in at least the last 650,000 years.<sup>16</sup> GHGs persist in the atmosphere for decades and in some cases millennia.<sup>17</sup>

The atmosphere and the oceans are reaching their capacity to absorb GHGs without significantly (and perhaps abruptly) changing the Earth's climate. California is already seeing the effects of climate change. As the Resources Agency observed in its 2009 report, we already are experiencing sea level rise, coastal erosion, increased average temperatures, more extreme hot days and increased heat waves, fewer shifts in the water cycle, and increases in the frequency and intensity of wildfires. (Resources Agency, *2009 Climate Adaptation Strategy* at p. 3.)<sup>18</sup> These effects are expected to increase with rising GHG levels in the atmosphere.

The burdens of climate change will not be shared equally. Future climate scenarios are expected to disproportionately affect, for example, the urban poor, the elderly and children, traditional societies, agricultural workers and rural populations. (Office of Environmental Health Hazard Assessment, *Indicators of Climate Change in California: Environmental Justice Impacts* (Dec. 2010) at p. 2.)<sup>19</sup>

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<sup>13</sup> Hall and Brajer, at 5.

<sup>14</sup> See <http://www.epa.gov/climatechange/science/recentac.html>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Intergovernmental Panel on Climate Change, *Frequently Asked Questions*, FAQ 10.3 (2007), available at [www.ipcc.ch/pdf/assessment-report/ar4/wg1/ar4-wg1-faqs.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/wg1/ar4-wg1-faqs.pdf).

<sup>18</sup> Available at <http://www.climatechange.ca.gov/adaptation/>.

<sup>19</sup> Available at <http://oehha.ca.gov/multimedia/epic/epic123110.html>.

In order to stabilize the climate and avoid the most catastrophic outcomes of climate change, we must substantially reduce our annual GHG emissions over time, achieving a low-carbon future by midcentury. California has memorialized this overarching environmental objective in law. Under AB 32<sup>20</sup>, by 2020, California must reduce its total statewide greenhouse gas emissions to the level they were in 1990. (Health & Saf. Code, § 38550). To achieve AB 32's 2020 target, total statewide greenhouse gas emissions must be reduced by approximately 15 percent from current (2008) levels. AB 32 implements Executive Order S-03-05 (2005),<sup>21</sup> which set the statewide 2020 target as an interim step to reducing statewide emission levels, by 2050, to 80 percent below 1990 levels. "The 2020 goal was established to be an aggressive, but achievable, mid-term target, and the 2050 greenhouse gas emissions reduction goal represents the level scientists believe is necessary to reach levels that will stabilize climate." (Air Resources Board (ARB), Scoping Plan at p. 4.)<sup>22</sup>

The emissions reductions required to reach our statewide climate objective are substantial. In the longer term, we must reduce our total GHG emissions by approximately four percent per year between 2020 and 2030, and our per capita emissions by slightly less than five percent per year during the 2020 to 2030 period, with continued reductions required through midcentury. (These reductions required are graphically illustrated by the chart from ARB's Scoping Plan, attached to this letter as Exhibit A.) One of the prime objectives of SB 375, a law supporting and complementary to AB 32, and of the requirement for Sustainable Communities Strategies, is to create a long-term downward trajectory for GHG emissions in California through transportation and land use strategies.

Given the seriousness of the climate change problem, and the enormity of our GHG reduction task, we are greatly concerned that, when viewed in context, the RTP/SCS seems to be setting the region on a course that is inconsistent with the State's climate objectives. Specifically, per capita GHG emissions from cars and light-duty trucks increase as compared to the previous year after 2020 (see RTP, Table 301 at p. 3-3), while AB 32 requires that we must aggressively and steadily reduce total per capita GHG emissions during this time period. (See Exhibit A.) Moreover, the total number of vehicle miles travelled (VMT) driven in the San Diego region will steadily increase over the life of the RTP/SCS over the 2010 baseline by 10%, 32%, and 51% in 2020, 2035, and 2050, respectively. (DEIR, pp. 4.12-16, 4.12-21, 4.12-24;

<sup>20</sup> Cal. Health and Safety Code, § 38,500, *et seq.*

<sup>21</sup> The DEIR states that the Executive Order "does not constitute a 'plan' for GHG reduction, and no state plan has been adopted to achieve the 2050 goal." (DEIR, pp. 4.8-29 to 4.8-30.) The DEIR therefore does not find the RTP/SCS's failure to meet the Executive Order's goals to be a significant impact. This position fails to recognize that Executive Order S-3-05 is an official policy of the State of California, established by a gubernatorial order in 2005, and designed to meet the environmental objective that is relevant under CEQA (climate stabilization). SANDAG thus cannot simply ignore it.

<sup>22</sup> Available at [http://www.arb.ca.gov/cc/scopingplan/document/adopted\\_scoping\\_plan.pdf](http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf). The Scoping Plan was readopted by ARB on August 24, 2011.

contrast with Table TA 3.1.) Under the most optimistic figures presented in the DEIR, total VMT will drop only 1% over current levels by 2050. Moreover, the DEIR predicts that the 14.33 million metric tons of greenhouse gases (expressed as MMT of carbon dioxide equivalent) emitted by cars and light duty trucks in 2010 (DEIR, p. 4.8-5) will fall to 12.04 MMT in 2020 (DEIR, p. 4.8-20), based largely on statewide tailpipe and fuel standards, but will then begin rising again, to 12.94 MMT in 2035 and 14.74 MMT in 2050. (DEIR, pp. 4.8-23, 4.8-25, respectively.) Thus, although SANDAG will meet the SB 375 goals for per capita GHG targets for cars and trucks set for it by ARB in 2020 and 2035, the DEIR shows that total GHG emissions from cars and light-duty trucks in 2050 will increase over the 2010 emissions level.

The DEIR finds the impact of the RTP/SCS on GHG emissions to be not significant in 2020 (DEIR, p. 4.8-20), significant in 2035 (DEIR, p. 4.8-23), and significant in 2050 (DEIR, p. 4.8-25). SANDAG must, however, make a determination whether the project as a whole has significant climate change impacts. We believe strongly that it does. What the DEIR shows is that the suite of strategies relied on by SANDAG, which include a heavy reliance on roadway expansion projects, does not deliver GHG reductions that are sustainable in the long term. In fact, infrastructure and land use decisions made in the early years of the RTP/SCS may lock in transportation inefficiencies and preclude any realistic possibility of meeting the Executive Order's goal of an 80% reduction in GHG emissions. The DEIR states that "[t]otal land-use based GHG emissions in 2050 are projected to be 21.85 MMT CO<sub>2</sub>e, or 50 percent greater than GHG emissions in 2010 (Table 4.8-11)." (DEIR at p. 4.8-24.) The DEIR should address the impact of the draft RTP/SCS on this important long-term policy in greater detail.

The DEIR is legally deficient for the additional reason that it does not analyze potential changes to the project design or specific mitigation measures for the GHG emissions impacts from land use; it makes only a generalized promise to prepare future RTPs "to incorporate policies and measures that lead to reduced GHG emissions." (DEIR, p. 4.8-35.) Further, the DEIR proposes some mitigation measures for GHG emissions attributable to transportation, but does not include any transportation mitigation that relates to land use, nor does it show that any such measures would be infeasible. We believe that CEQA requires much more analysis of potential mitigation measures, and that postponing this discussion and analysis until future RTP/SCS's and individual projects is a violation of CEQA's substantive provisions. (Public Res. Code §§ 21002, 21081(a); see *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 89-96.) SANDAG has the authority to approve the RTP/SCS even if it will have substantial environmental impacts, and CEQA will not second-guess the wisdom of that choice, so long as substantial evidence supports SANDAG's findings. (Public Res. Code § 21081(b).) However, SANDAG may not approve an environmentally damaging project until and unless it has adopted all feasible mitigation measures or shown that further mitigation – including land use mitigation – is infeasible. The DEIR does not yet do so.

We recognize that this is the first SCS prepared in California, and that SANDAG is charting new territory. However, the legal requirements of CEQA, including the requirement to mitigate significant impacts to the extent feasible, are not satisfied simply because the RTP/SCS meets the targets contained in SB 375 for 2020 and 2035. CEQA demands a full analysis and all

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feasible mitigation of every significant impact resulting from the implementation of the RTP/SCS, throughout the full life of the Plan. The DEIR does not now provide this for GHG emissions.

### Comments on RTP/SCS

Although we are not commenting directly on the legal adequacy of the RTP/SCS under SB 375, we concur in the comments submitted to SANDAG by the California Office of Planning and Research (OPR). As discussed above, we are particularly concerned that per capita greenhouse gas (GHG) emissions associated with cars and light-duty trucks (and associated co-pollutants like particulate matter) begin to rise after 2020. (See OPR comment letter at pp. 3-4; Draft RTP at p. 3-3, Table 3.1; see also DEIR at Tables 4.3-5, p. 4.3-25.) As OPR notes, this "implies that future growth will be unavoidably less transportation efficient, which counters SB 375's underlying purpose." (OPR comment letter at p. 3.) If the RTP/SCS in fact runs counter to SB 375's purpose to reduce transportation-related GHG emissions over time, this would bear on whether the effects of the plan should be considered significant under CEQA.

In addition, OPR's comments discuss a failure of the DEIR and RTP/SCS to fully disclose the methodology by which VMT was projected, making it difficult or impossible for the lay public to determine for itself whether the information presented in the two documents is accurate and supported by substantial evidence. This lack of transparency is also a crucial flaw under CEQA, a statute whose purposes include accountability as to governmental decisions that affect the environment. (*Laurel Heights Improvement Ass'n v. Regents of the University of California* (1989) 47 Cal.3d 376, 392 [holding that "the EIR . . . is a document of accountability" for the public officials who certify it].)

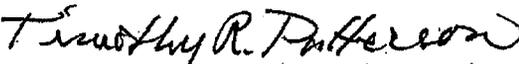
### Conclusion

We appreciate the difficulty of preparing the first SCS in California. We believe that SANDAG has not yet prepared a DEIR on the RTP/SCS that fully satisfies CEQA's requirements, and urge SANDAG to redo several parts of the DEIR, as described in our comments herein. This RTP/SCS presents SANDAG with an opportunity to integrate transportation and land-use planning in a way that reduces GHG emissions and harmful air pollution, and that produces other benefits such as increased mobility and better public health for all the region's residents, particularly its sensitive and already overburdened communities. We

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would be happy to work with SANDAG to take the additional steps needed to take full advantage of this opportunity. We appreciate your consideration of our comments.

Sincerely,

  
TIMOTHY R. PATTERSON *by SLD*  
Supervising Deputy Attorney General

  
SUSAN DURBIN  
Deputy Attorney General

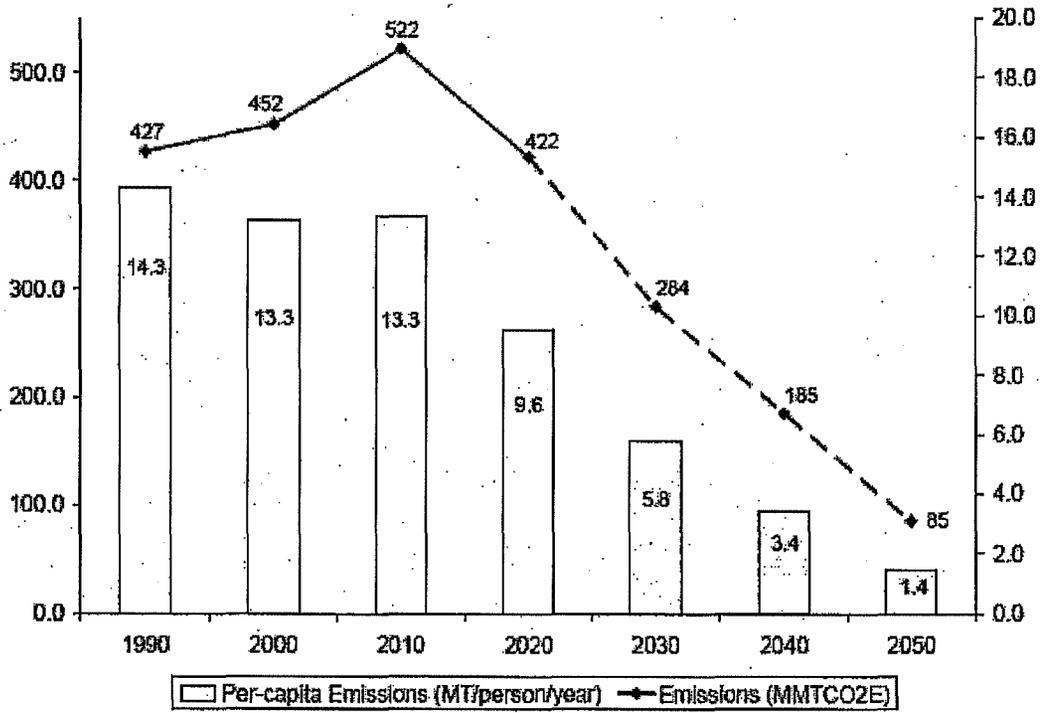
For KAMALA D. HARRIS  
Attorney General

cc: Gary Gallegos, Executive Director, San Diego Association of Governments  
Julie D. Wiley, General Counsel, San Diego Association of Governments

Attachment

EXHIBIT A

Emissions Trajectory Towards 2050



(ARB, Scoping Plan, Figure 6, at p. 118.)